

## REMARKS

Applicants respectfully request further examination and reconsideration in view of the instant response. Claims 1-18 and 26-40 remain pending in the instant application. Claims 1-18 and 26-40 are rejected.

## APPEAL BRIEF

Applicants respectfully note that the instant Response is filed contemporaneously with an Appeal Brief addressing rejections presented in the Office Action mailed February 18, 2009, hereinafter referred to as the "instant Office Action."

The instant Response only addresses the provisional double patenting rejection of Claims 1, 6-8, 10, 11, 13, 16-19, 23-26, 30-33, 36, 37, 39 and 40.

## PROVISIONAL DOUBLE PATENTING REJECTION

Claims 1, 6-8, 10, 11, 13, 16-19, 23-26, 30-33, 36, 37, 39 and 40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being obvious over claims 1, 4, 8-10, 13, 14, 16, 29-34, 38, 39 and 41 of U.S. Application No. 10/698,810 in view of U.S. Patent Application Publication No. 2003/0158913 by Agnoli et al. (instant Office Action, pages 10-11). Appellants respectfully request that these provisional rejections be held in abeyance until all other substantive issues in this case have been resolved. The filing of a terminal disclaimer in this case will not constitute an admission of the propriety of the provisional obviousness-type double patenting rejection. See MPEP § 804.02 and *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991).

## CONCLUSION

In light of the above remarks, Applicants respectfully request reconsideration of the rejected claims.

Based on the arguments presented above and in the contemporaneously submitted Appeal Brief, Applicants respectfully assert that Claims 1-18 and 26-40 overcome the rejections of record and, therefore, Applicants respectfully solicit allowance of these claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,  
WAGNER BLECHER LLP

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